

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

LAW OFFICES OF BEN F. BARCUS &
ASSOCIATES, PLLC,

Plaintiff,

v.

KARI I. LESTER, TODD KUTZKE,
OGDEN MURPHY WALLACE, PLLC,

Defendants.

CASE NO. C15-5210 BHS

ORDER REQUESTING
RESPONSES AND RENOTING
DEFENDANTS' MOTIONS FOR
SUMMARY JUDGMENT

This matter comes before the Court on Defendants Todd Kutzke and Kari Lester's ("Lester") motion for summary judgment (Dkt. 21), Defendant Ogden Murphy Wallace, PLLC's ("Ogden Murphy") motion for summary judgment (Dkt. 36), and Lester's motion to strike surreply (Dkt. 69). The Court has considered the pleadings filed in support of and in opposition to the motions and the remainder of the file and hereby requests responses to the issues below and renotes the motions for the reasons stated herein.

I. PROCEDURAL HISTORY

On October 23, 2014, Plaintiff Law Offices of Ben F. Barcus & Associates, PLLC ("Plaintiff") filed a complaint against Lester and Ogden Murphy in Pierce County Superior Court for the State of Washington. Dkt. 1-3. Plaintiff asserts causes of action

1 for interference with business relationships, conversion, breach of loyalty, breach of
 2 fiduciary duties, and a violation of the Washington Consumer Protection Act, RCW
 3 Chapter 19.86 (“CPA”). *Id.* On March 13, 2015, Lester filed an amended answer and
 4 asserted counterclaims against Plaintiff for sexual harassment in violation of state law,
 5 intentional interference with business expectancy, violations of the CPA, defamation,
 6 breach of contract and wrongful withholding of wages, and a violation of the Equal Pay
 7 Act, 29 U.S.C. § 206 (“EPA”). Dkt. 1-2.

8 On March 3, 2015, Plaintiff removed the matter to this Court based on subject
 9 matter jurisdiction over Lester’s EPA claim. Dkt. 1.

10 On October 29, 2015, Lester and Ogden Murphy filed motions for summary
 11 judgment seeking dismissal of Plaintiff’s state law claims. Dkt. 21 & 36. On November
 12 16, 2015, Plaintiff responded. Dkt. 39. On November 20, 2015, Lester and Ogden
 13 Murphy replied. Dkts. 55 & 57. On November 25, 2015, Plaintiff filed a surreply. Dkt.
 14 64. On November 30, 2015, Lester filed a motion to strike Plaintiff’s surreply. Dkt. 69.

15 II. DISCUSSION

16 The district court may decline to exercise supplemental jurisdiction for various
 17 reasons. First, “the district courts shall have supplemental jurisdiction over all other
 18 claims that are so related to claims in the action within such original jurisdiction that they
 19 form part of the same case or controversy under Article III” 28 U.S.C. § 1367(a).
 20 “The constitutional ‘case or controversy’ standard confers supplemental jurisdiction over
 21 all state claims which arise out of a common nucleus of operative fact with a substantial
 22 federal claim.” *Parker v. Scrap Metal Processors, Inc.*, 468 F.3d 733, 743 (11th Cir.

1 2006) (citing *United Mine Workers of America v. Gibbs*, 383 U.S. 715, 725 (1966)).

2 Cases arise out of a common nucleus of operative fact when “[t]hey will involve the same
3 witnesses, presentation of the same evidence, and determination of the same, or very
4 similar, facts.” *Palmer v. Hosp. Auth. of Randolph Cnty.*, 22 F.3d 1559, 1563–64 (11th
5 Cir. 1994)).

6 In this case, it is debatable whether the state law claims arise out of a common
7 nucleus of facts with the federal EPA claim. The main basis for the claims and
8 counterclaims arise out of Lester’s departure from Plaintiff’s firm and her interactions
9 with current clients at that time. On the other hand, the EPA claim arises out of
10 allegations that Lester was not paid the same as comparable attorneys in Plaintiff’s firm.
11 Not only does the EPA claim not involve Ogden Murphy, but the claim also involves
12 facts that are not common to any of the state law claims. Thus, it appears that the claims
13 will involve different witnesses, with the exception of Lester, different evidence, and the
14 determination of different facts. The Court requests the parties’ positions on this issue.

15 Second, the Court may decline such jurisdiction if “the claim substantially
16 predominates over the claim or claims over which the district court has original
17 jurisdiction.” 28 U.S.C. § 1367(c)(2).

18 [I]f it appears that the state issues substantially predominate, whether in
19 terms of proof, of the scope of the issues raised, or of the
20 comprehensiveness of the remedy sought, the state claims may be
21 dismissed without prejudice and left for resolution to state tribunals.

22 *Gibbs*, 383 U.S. 715, 726-27 (1966). The Ninth Circuit has affirmed a district court’s
decision to decline to exercise supplemental jurisdiction when the single federal claim

1 was nothing more than “a slender federal reed on which to base jurisdiction over
2 [substantial state law claims].” *Patel v. Penman*, 103 F.3d 868, 877 (9th Cir. 1996),
3 *overruled in part on other grounds as recognized by Nitco Holding Corp. v. Boujikian*,
4 491 F.3d 1086 (9th Cir. 2007).

5 In this case, the Court is concerned with exercising supplemental jurisdiction. The
6 parties have hung numerous, factually intensive state law claims on the slender federal
7 reed of an EPA claim. “[T]he Equal Pay Act requires that women receive ‘equal pay for
8 equal work.’” *Gunther v. Washington Cty.*, 623 F.2d 1303, 1309 (9th Cir. 1979), *aff’d*,
9 452 U.S. 161 (1981). Resolving this claim appears to be a relatively simple exercise,
10 especially when the alleged comparative job is the same associate level attorney position.
11 The state law claims, however, are extremely complicated and fact intensive, which is
12 shown by the hundreds, if not thousands, of pages of briefing and evidence submitted in
13 support of and in opposition to summary judgment. The Court is typically reluctant to
14 decline jurisdiction based on the predominance factor, but if there was ever a case that at
15 least deserved a discussion of declining jurisdiction, this is the case. Therefore, the Court
16 requests the parties’ positions on this issue.

17 Third, the Court may decline to exercise jurisdiction if “the claim raises a novel or
18 complex issue of State law.” 28 U.S.C. § 1367(c)(1).

19 In this case, the parties cite cases from state courts all over the country. This fact
20 leads the Court to assume that the claims involve novel issues of state law. Therefore, the
21 Court requests responses to this issue as well.
22

III. ORDER

Therefore, it is hereby **ORDERED** that any party may submit a response to the issues set forth above. Responses shall be filed no later than February 5, 2016. The Clerk shall renote Lester and Ogden Murphy's motions for summary judgment (Dkts. 21 & 36) and Lester's motion to strike for consideration on the Court's February 5, 2016 calendar.

Dated this 26th day of January, 2016.



BENJAMIN H. SETTLE
United States District Judge